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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,317	10/12/2001	Alan David Watson	WATS3001/REF/C	8178

7590 12/22/2004

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EXAMINER

HARTLEY, MICHAEL G

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/975,317

Applicant(s)

WATSON ET AL.

Examiner

Michael G. Hartley

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 75-95 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 75-95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

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***Response to Amendment***

The amendment filed 11/16/2004 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 75-77, 79-82 and 87-95 are rejected under 35 U.S.C. 102(b) as being anticipated by Rocklage (US 5,190,744), for the reasons set forth in the office action mailed 7/16/2004.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 83-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rocklage (US 5,190,744) in view of Rocklage (US Pat. 4,889,931), for the reasons set forth in the office action mailed 7/16/2004.

Claim 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rocklage (US 5,190,744) in view of Goldenberg (US Pat. 5,632,968), for the reasons set forth in the office action mailed 7/16/2004.

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### ***Response to Arguments***

Applicant's arguments filed 11/16/2004 have been fully considered but they are not persuasive.

Applicant asserts that Rocklage discloses imaging coronary ischemia and not myocardial ischemia, as claimed and coronary ischemia is related to the arteries and not the heart muscle.

This is not found persuasive coronary ischemia is a term of art which refers to the heart generally. This is clear since the ischemia of the heart would be areas that are effected by lack of blood and oxygen to the heart, such as, the area or muscle surrounding the arteries. Clearly, one skilled in the art would view imaging coronary ischemia to fall within the scope of be the same as imaging myocardial ischemia. Coronary as defined by a dictionary, is "of or relating to the heart."

Applicant also asserts that the Rocklage fails to disclose a method of distinguishing between reversibly injured tissue and irreversible injured tissue, but only describe imaging ischemia.

This is not found persuasive because this analysis is what is obtained through such imaging. A doctor analyzes the images obtained to see the degree of damage to the tissue. It is noted that the claims do not include any steps to arrive at such distinguishing. Rocklage has the same steps as claimed, thus, must result in the same images. Clearly, the images obtained by the methods of Rocklage would be analyzed to determine the severity of the problem. However, Rocklage does teach such a method, by stating that the assessment of different degrees of ischemia are made (column 3) and that various distinguishing the severity of such problems can be made, see column 6.

Applicant also asserts that there is nothing in the prior art to suggest manganese contrast agents would dissociate when administered and be taken up by viable myocardial tissue.

This is not found persuasive because same compounds must have the same properties. The prior art discloses manganese contrast agents that are used for the same methods, i.e., imaging heart ischemia to analyze the severity of the problem. The prior art discloses methods which have the steps encompassing those of the claims and use the same contrast agents therefore.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Gries US 4,957,939 and Meade US 5,707,605 are made of record for disclosing methods of imaging cardiac infarction using Mn-chelates as dosages as claimed, but was not cited herein as it was viewed as cumulative to the references relied upon hereinabove.

No claims are allowed at this time.

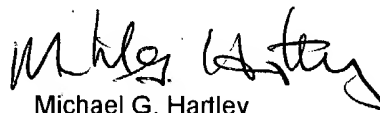
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Hartley whose telephone number is (571) 272-0616. The examiner can normally be reached on M-Tu and Th-F, 7:30-4, Telework on Wed..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael G. Hartley  
Primary Examiner  
Art Unit 1616

12/10/2004